# EXHIBIT B

CIVIL BUSINESS OFFICE 12
CENTRAL DIVISION

2007 OCT 29 P 4: 04

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

SHEPPARD MULLIN RICHTER & HAMPTON LLP
A Limited Liability Partnership
Including Professional Corporations
JAMES J. MITTERMILLER, Cal. Bar No. 85177
JOHN C. DINEEN, Cal. Bar No. 222095
501 West Broadway, 19th Floor
San Diego, California 92101-3598
Telephone: 619-338-6500
Facsimile: 619-234-3815

Attorneys for Defendants
SPRINT PCS ASSETS, L.L.C. and SPRINT PCS LICENSE, L.L.C.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

JAMES M. KINDER,

Plaintiff,

v.

SPRINT PCS ASSETS, L.L.C., SPRINT PCS LICENSE, L.L.C. and DOES 1 through 100, inclusive,

Defendants.

Case No. 37-2007-00074754-CU-MC-CTL

**NOTICE TO SUPERIOR COURT AND TO PLAINTIFF OF REMOVAL TO FEDERAL COURT**

TO THE HONORABLE JUDGES OF THE SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, DOWNTOWN BRANCH, AND TO PLAINTIFF JAMES M. KINDER AND HIS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on this date in the above-entitled action, Defendants in this action caused to be filed with the United States District Court, Southern District of California, the attached Notice of Removal.

Dated: October 16, 2007

SHEPPARD MULLIN RICHTER & HAMPTON LLP

By [signature]
JAMES J. MITTERMILLER
JOHN C. DINEEN

Attorney for Defendants
SPRINT PCS ASSETS, L.L.C. and SPRINT PCS LICENSE, L.L.C.

# EXHIBIT A

SHEPPARD MULLIN RICHTER & HAMPTON LLP
A Limited Liability Partnership
Including Professional Corporations
JAMES J. MITTERMILLER, Cal. Bar No. 85177
JOHN C. DINEEN, Cal. Bar No. 222095
501 West Broadway, 19th Floor
San Diego, California 92101-3598
Telephone: 619-338-6500
Facsimile: 619-234-3815

Attorneys for Defendants
SPRINT PCS ASSETS, L.L.C. and SPRINT PCS LICENSE, L.L.C.

FILED
OCT 26 2007
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JAMES M. KINDER,

Plaintiff,

v.

SPRINT PCS ASSETS, L.L.C., SPRINT PCS LICENSE, L.L.C. and DOES 1 through 100, inclusive,

Defendants.

Case No. '07 CV 2049 WQH JMA

**DEFENDANTS' NOTICE OF REMOVAL TO FEDERAL COURT**

[Complaint Filed: September 11, 2007]

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Defendants Sprint PCS Assets, L.L.C. and Sprint PCS License, L.L.C. (collectively "Sprint"), provide notice that pursuant to 28 U.S.C. §§ 1441 and 1446 Defendants hereby remove to this Court the state court action styled as *James M. Kinder v. Sprint PCS Assets, L.L.C. et al.*, San Diego Superior Court Case Number 37-2007-00074754-CU-MC-CTL.

The following is a listing of the pleadings to date and a short and plain statement of the grounds for removal:

## I.

## THE STATE COMPLAINT

1. On September 11, 2007, plaintiff James M. Kinder ("Kinder") filed a complaint against Defendants Sprint PCS Assets, L.L.C. and Sprint PCS License, L.L.C. in the California Superior Court for the County of San Diego, Superior Court Case Number 37-2007-00074754-CU-MC-CTL. A copy of that complaint, which is the only pleading in this case, is attached hereto as Exhibit A.

2. The first date upon which Defendants received a copy of the complaint was September 27, 2007 when Defendant Sprint PCS License, L.L.C. was served with a copy of the complaint and a summons from the state court. A copy of the summons is included with the complaint as Exhibit A.

## II.

## THE PARTIES ARE DIVERSE

This Court has original jurisdiction over this case because diversity jurisdiction exists under 28 U.S.C. § 1332, in that:

3. Plaintiff Kinder alleges he is a resident of the County of San Diego, State of California. Complaint ¶ 1. Defendants allege, on information and belief, that Plaintiff Kinder's domicile is San Diego, California. Plaintiff Kinder, therefore, is a citizen of California.

4. Defendant Sprint PCS Assets, L.L.C. is not a citizen of California. Defendant Sprint PCS Assets, L.L.C. is a limited liability company organized under the laws of Delaware, with its principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251. Defendant Sprint PCS Assets, L.L.C. has one member, Sprint Telephony PCS, L.P.

5. Sprint Telephony PCS, L.P. is a limited partnership organized under the laws of Delaware, with a principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251. Sprint Telephony PCS, L.P. has two partners: Sprint Spectrum Holding Company, L.P. and SWV Three Telephony Partnership.

6. Sprint Spectrum Holding Company, L.P. is a limited partnership organized under the laws of Delaware with a principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251. Sprint Spectrum Holding Company, L.P. has four partners: Sprint Enterprises, L.P., SWV Six, Inc., SWV One Telephony Partnership and SWV Two Telephony Partnership.

7. Sprint Enterprises, L.P. is a limited partnership organized under the laws of Delaware, with a principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251. It has two partners: UCOM, Inc. and US Telecom, Inc. UCOM, Inc. is a corporation organized under the laws of Missouri with a principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251. US Telecom, Inc. is a corporation organized under the laws of Kansas with a principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251.

8. SWV Six, Inc. is a corporation organized under the laws of Colorado, with a principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251.

9. SWV One Telephony Partnership is a partnership organized under the laws of Delaware with a principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251. It has two partners: SWV One, Inc. and SWV Two, Inc. SWV One, Inc. is a corporation organized under the laws of Delaware, with a principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251. SWV Two, Inc. is a corporation organized under the laws of Delaware, with a principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251.

10. SWV Two Telephony Partnership is a partnership organized under the laws of Delaware with a principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251. It has two partners: SWV Three, Inc. and SWV Four, Inc. SWV Three, Inc. is a corporation organized under the laws of Delaware with a principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251. SWV Four, Inc. is a corporation organized under the laws of Delaware with a principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251.

11. SWV Three Telephony Partnership is a partnership organized under the laws of Delaware with a principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251. It has two partners: SWV Seven, Inc. and SWV Eight, Inc. SWV Seven, Inc. is a corporation organized under the laws of Delaware with a principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251. SWV Eight, Inc. is a corporation organized under the laws of Delaware with a principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251.

12. Defendant Sprint PCS License, L.L.C. *is not a citizen of California.* Defendant Sprint PCS License, L.L.C. is a limited liability company organized under the laws of Delaware, with its principal place of business in Overland Park, Kansas. Defendant Sprint PCS License, L.L.C. has one member, Sprint Telephony PCS, L.P. As

set forth, Sprint Telephony, L.P.'s principal place of business is Overland Park, Kansas and its partners and their related entities are not citizens of California.

13. The citizenship of DOE defendants suing and being sued under fictitious names is disregarded for purposes of diversity jurisdiction. *See* 28 U.S.C. § 1441(a).

## III.

## THE AMOUNT IN CONTROVERSY EXCEEDS $75,000

14. Defendants are informed and believe that the amount in controversy in this civil action exceeds $75,000.00, exclusive of interest and costs. Plaintiff asserts a cause of action for violation of the Telephone Consumer Protection Act of 1991 (47 U.S.C. § 227 and 47 C.F.R. § 64.1200) against two defendants. Complaint at ¶¶ 6-13. Plaintiff alleges that Defendants made "at least 169" telephone calls to his phone number assigned to a paging service and that he seeks an award of at least $500.00 for each such call and $1,500.00 for all calls found to be willful. See Complaint, ¶¶ 8, 13. Accordingly, Plaintiff's complaint seeks a minimum of $84,500.00, and $253,500.00 if the calls are found to be willful.

## IV.

## THIS COURT HAS DIVERSITY JURISDICTION

15. Plaintiff is a citizen of California. Defendants are citizens of Kansas and Delaware. None of Defendants is a citizen of California. Therefore, there is complete diversity among the parties. Because the amount of the controversy exceeds $75,000, exclusive of interests and costs, this Court has original jurisdiction pursuant to 28 U.S.C. § 1332.

## V.

## THE NOTICE OF REMOVAL IS PROCEDURALLY CORRECT

16. Pursuant to 28 U.S.C. § 1446(a), Defendants have filed this Notice of Removal in the U.S. District Court for the Southern District of California located in San Diego. Because the state court action is pending in the California Superior Court for San Diego County, this is the proper district for removal.

17. Pursuant to 28 U.S.C. § 1446(b) and Federal Rules of Civil Procedure 6 and 81(c), Defendants have filed this Notice of Removal within the time permitted for removal of complaints.

## VI.

## CONCLUSION

For these reasons, Defendants respectfully request that this Court proceed with this matter as if the Complaint had been originally filed in the U.S. District Court for the Southern District of California.

Dated: October 26, 2007

SHEPPARD MULLIN RICHTER & HAMPTON LLP

By [signature]
JAMES J. MITTERMILLER
JOHN C. DINEEN

Attorney for Defendants
SPRINT PCS ASSETS, L.L.C. and SPRINT PCS LICENSE, L.L.C.

# SUMMONS
## (CITACION JUDICIAL)

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

2007 SEP 11 PM 3:51

SAN DIEGO COUNTY, CA

**NOTICE TO DEFENDANT:**
**(AVISO AL DEMANDADO):**
Sprint PCS Assets, L.L.C., Sprint PCS License, L.L.C. and DOES 1 through 100, inclusive.

**YOU ARE BEING SUED BY PLAINTIFF:**
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
James M. Kinder

**You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.**

**There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.**

***Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.***

***Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.***

The name and address of the court is:
*(El nombre y dirección de la corte es):*
San Diego Superior Court - Central Division
330 W. Broadway
San Diego, CA 92101

CASE NUMBER:
*(Número del Caso):*
37-2007-00074754-CU-MC-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
*(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):*
Chad Austin, Esq.
3129 India St.
San Diego, CA 92103-6014
SBN 235457
619-297-8888 F 619-295-1401

DATE: *(Fecha)* SEP 11 2007 Clerk, by *(Secretario)* LINDA SPENCE, Deputy *(Adjunto)*

*(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)*
*(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, (POS-010)).*

[SEAL]

**NOTICE TO THE PERSON SERVED:** You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☒ on behalf of *(specify):* Sprint PCS License, L.L.C.

under:
- ☒ CCP 416.10 (corporation)
- ☐ CCP 416.20 (defunct corporation)
- ☐ CCP 416.40 (association or partnership)
- ☐ other *(specify):*
- ☐ CCP 416.60 (minor)
- ☐ CCP 416.70 (conservatee)
- ☐ CCP 416.90 (authorized person)

4. ☒ by personal delivery on *(date):* 9/27/07

EXHIBIT A 07

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Chad Austin, Esq.
3129 India St.
San Diego, CA 92103-6014
SBN 235457

TELEPHONE NO.: 619-297-8888 FAX NO.: 619-295-1401
ATTORNEY FOR (Name): James M. Kinder

FOR COURT USE ONLY

[stamp:] ... CIVIL DIVISION 2007 SEP 11 PM 3:51 ... SAN DIEGO COUNTY, CA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
STREET ADDRESS: 330 W. Broadway
MAILING ADDRESS: same
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME: Central Division

CASE NAME: James M. Kinder v. Sprint PCS Assets, L.L.C. and Sprint PCS License, L.L.C.

## CIVIL CASE COVER SHEET

[X] Unlimited (Amount demanded exceeds $25,000)
[ ] Limited (Amount demanded is $25,000 or less)

Complex Case Designation
[ ] Counter [ ] Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 37-2007-00074754-CU-MC-CTL
JUDGE:
DEPT:

*Items 1-6 below must be completed (see instructions on page 2).*

1. Check one box below for the case type that best describes this case:

**Auto Tort**
[ ] Auto (22)
[ ] Uninsured motorist (46)

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**
[ ] Asbestos (04)
[ ] Product liability (24)
[ ] Medical malpractice (45)
[ ] Other PI/PD/WD (23)

**Non-PI/PD/WD (Other) Tort**
[ ] Business tort/unfair business practice (07)
[ ] Civil rights (08)
[ ] Defamation (13)
[ ] Fraud (16)
[ ] Intellectual property (19)
[ ] Professional negligence (25)
[ ] Other non-PI/PD/WD tort (35)

**Employment**
[ ] Wrongful termination (36)
[ ] Other employment (15)

**Contract**
[ ] Breach of contract/warranty (06)
[ ] Rule 3.740 collections (09)
[ ] Other collections (09)
[ ] Insurance coverage (18)
[ ] Other contract (37)

**Real Property**
[ ] Eminent domain/Inverse condemnation (14)
[ ] Wrongful eviction (33)
[ ] Other real property (26)

**Unlawful Detainer**
[ ] Commercial (31)
[ ] Residential (32)
[ ] Drugs (38)

**Judicial Review**
[ ] Asset forfeiture (05)
[ ] Petition re: arbitration award (11)
[ ] Writ of mandate (02)
[ ] Other judicial review (39)

**Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)**
[ ] Antitrust/Trade regulation (03)
[ ] Construction defect (10)
[ ] Mass tort (40)
[ ] Securities litigation (28)
[ ] Environmental/Toxic tort (30)
[ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

**Enforcement of Judgment**
[ ] Enforcement of judgment (20)

**Miscellaneous Civil Complaint**
[ ] RICO (27)
[X] Other complaint (not specified above) (42)

**Miscellaneous Civil Petition**
[ ] Partnership and corporate governance (21)
[ ] Other petition (not specified above) (43)

2. This case [ ] is [X] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. [ ] Large number of separately represented parties
   b. [ ] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. [ ] Substantial amount of documentary evidence
   d. [ ] Large number of witnesses
   e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. [ ] Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. [X] monetary b. [ ] nonmonetary; declaratory or injunctive relief c. [ ] punitive
4. Number of causes of action (specify): 1
5. This case [ ] is [X] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 09-10-07
Chad Austin, Esq.
(TYPE OR PRINT NAME)

[signature]
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Chad Austin, Esq. SBN 235457
3129 India Street
San Diego, CA 92103-6014
Telephone: (619) 297-8888
Facsimile: (619) 295-1401

Attorney for Plaintiff JAMES M. KINDER, an individual

2007 SEP 11 PM 3:51

SAN DIEGO COUNTY, CA

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN DIEGO**

| | |
|---|---|
| JAMES M. KINDER,<br><br>Plaintiff,<br><br>v.<br><br>SPRINT PCS ASSETS, L.L.C., SPRINT PCS LICENSE, L.L.C. and DOES 1 through 100, inclusive,<br><br>Defendants. | CASE NO. 37-2007-00074754-CU-MC-CTL<br><br>**COMPLAINT FOR DAMAGES**<br><br>**Violations of Telephone Consumer Protection Act of 1991** |

COMES NOW Plaintiff JAMES M. KINDER (hereinafter referred to as "Plaintiff") who alleges as follows:

## GENERAL ALLEGATIONS

1. Plaintiff is, and at all times herein mentioned was, a resident of the County of San Diego, State of California.

2. Defendants SPRINT PCS ASSETS, L.L.C. and SPRINT PCS LICENSE, L.L.C. (hereinafter referred to as "Defendants"), were at all times herein mentioned Delaware limited liability companies, doing business in the County of San Diego, State of California.

3. Plaintiff is unaware of the true names and capacities of defendants sued herein as DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

EXHIBIT A 09

Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's damages as herein alleged were proximately caused by their conduct.

4. At all times herein mentioned each defendant was the partner, agent and employee of each co-defendant herein and was at all times acting within the scope of such partnership, agency and employment and each defendant ratified the conduct of each co-defendant herein.

**FIRST AND ONLY CAUSE OF ACTION**
[Violation of Telephone Consumer Protection Act of 1991]

5. Plaintiff realleges paragraphs 1 through 4 above and incorporates them herein by reference.

6. Plaintiff is bringing this action pursuant to the provisions of the Telephone Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – "TCPA").

7. Subdivision (b) (1) (A) (iii) of Section 227 of Title 47 of the United States Code makes it unlawful for any person to "Make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice...to any telephone number assigned to a paging service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call."

8. Defendants have been calling Plaintiff's number assigned to a paging service, using an Automatic Telephone Dialing System and/or an artificial or prerecorded voice on at least 169 occasions within the statutory period of the last 4 years, pursuant to 47 U.S.C. § 1658. These 169 calls are only the calls known to Plaintiff at this time and Plaintiff states on information and belief, without yet having the aid of full discovery, that it is quite likely that Defendant has made many more violative calls to Plaintiff's number assigned to a paging service than the 169 of which he is currently aware.

9. Subdivision (b) (1) of Section 64.1200 of Title 47 of the Code of Federal Regulations requires that all prerecorded telephone messages disseminated within the United States must "At the beginning of the message, state clearly the identity of the business, individual, or other

EXHIBIT A 10

entity that is responsible for initiating the call. If a business is responsible for initiating the call, the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be stated."

10. Defendants' illegal prerecorded message calls failed to comply with this requirement.

11. Subdivision (b) (2) of Section 64.1200 of Title 47 of the Code of Federal Regulations requires that all prerecorded telephone messages disseminated within the United States must "state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual. The telephone number may not be a 900 number or any number for which charges exceed local or long distance transmission charges. For telemarketing messages to residential telephone subscribers, such telephone numbers must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign."

12. Defendants' illegal prerecorded message calls failed to comply with this requirement.

13. Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a private right of action in state court for violations of 47 U.S.C. §227 (b) (1) (A) (iii), 47 C.F.R. §64.1200 (b) (1) and 47 C.F.R. §64.1200 (b) (2). Plaintiff is entitled to a minimum of $500.00 in statutory damages for each such violation. If the court finds that defendants' violations were willful or knowing, it may, in its discretion, award up to three times that amount.

WHEREFORE Plaintiff prays for judgment against defendants, and each of them, as follows:

On the FIRST AND ONLY CAUSE OF ACTION:

1. For an award of $500.00 for each violation of 47 U.S.C. §227 and 47 C.F.R. § 64.1200;
2. For an award of $1,500.00 for each such violation found to have been willful;
3. For costs of suit herein incurred; and

///

///

///

4. For such other and further relief as the Court deems proper.

Dated: September 10, 2007

By: ____________________
CHAD AUSTIN, Esq.
Attorney for Plaintiff JAMES M. KINDER

EXHIBIT A 12

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**
STREET ADDRESS: 330 West Broadway
MAILING ADDRESS: 330 West Broadway
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME: Central
TELEPHONE NUMBER: (619) 685-6022

PLAINTIFF(S) / PETITIONER(S): JAMES M KINDER

DEFENDANT(S) / RESPONDENT(S): SPRINT PCS ASSETS LLC et.al.

KINDER VS. SPRINT PCS ASSETS LLC

| NOTICE OF CASE ASSIGNMENT | CASE NUMBER: 37-2007-00074754-CU-MC-CTL |
|---|---|

Judge: Charles R. Hayes

Department: C-66

**COMPLAINT/PETITION FILED:** 09/11/2007

**CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW**

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

**TIME STANDARDS:** The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

**COMPLAINTS:** Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

**DEFAULT:** If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 *PRIOR TO THAT HEARING*

EXHIBIT A 13

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2007-00074754-CU-MC-CTL CASE TITLE: KINDER vs. SPRINT PCS ASSETS LLC

## NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

## ADR POLICY

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

## ADR OPTIONS

**1) CIVIL MEDIATION PROGRAM:** The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participant in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non- binding process in which a trained mediator 1) facilitates communication between disputants, and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute – the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

**Assignment to Mediation, Cost and Timelines:** Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation: $150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

**2) JUDICIAL ARBITRATION:** Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

***Assignment to Arbitration, Cost and Timelines:*** *Parties* may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under $50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court

**3) SETTLEMENT CONFERENCES:** The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time, request a settlement conference before the judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference judge.

**4) OTHER VOLUNTARY ADR:** Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (619) 238-2400.

**ADDITIONAL ADR INFORMATION:** For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.

| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO | FOR COURT USE ONLY |
|---|---|
| STREET ADDRESS: 330 West Broadway | |
| MAILING ADDRESS: 330 West Broadway | |
| CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 | |
| BRANCH NAME: Central | |
| PLAINTIFF(S): JAMES M KINDER | |
| DEFENDANT(S): SPRINT PCS ASSETS LLC et.al. | |
| SHORT TITLE: KINDER VS. SPRINT PCS ASSETS LLC | |
| **STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221)** | CASE NUMBER: 37-2007-00074754-CU-MC-CTL |

Judge: Charles R. Hayes

Department: C-66

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

- ☐ Court-Referred Mediation Program
- ☐ Private Neutral Evaluation
- ☐ Private Mini-Trial
- ☐ Private Summary Jury Trial
- ☐ Private Settlement Conference with Private Neutral
- ☐ Court-Ordered Nonbinding Arbitration
- ☐ Court-Ordered Binding Arbitration (Stipulated)
- ☐ Private Reference to General Referee
- ☐ Private Reference to Judge
- ☐ Private Binding Arbitration
- ☐ Other (specify): ______________________________

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) ______________________________

______________________________

______________________________

Alternate: (mediation & arbitration only) ______________________________

Date: ______________________ Date: ______________________

______________________ ______________________

Name of Plaintiff Name of Defendant

______________________ ______________________

Signature Signature

______________________ ______________________

Name of Plaintiff's Attorney Name of Defendant's Attorney

______________________ ______________________

Signature Signature

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1385. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

*No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.*

IT IS SO ORDERED.

Dated: 09/11/2007

______________________
JUDGE OF THE SUPERIOR COURT

CIVIL BUSINESS OFFICE 12
CENTRAL DIVISION

2007 OCT 29 P 4: 04

SUPERIOR COURT
COUNTY, CA

# PROOF OF SERVICE

## STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

## PROOF OF SERVICE BY HAND DELIVERY

I, the undersigned, say that I am and was at all times herein mentioned employed in the County of San Diego, State of California, over the age of 18 years and not a party to the within action or proceeding; that my business address is that of American Messenger Service, 2870 Fourth Avenue, Suite 102, San Diego, California 92103.

That on October 26, 2007, I served the following documents:

NOTICE TO SUPERIOR COURT AND TO PLAINTIFF OF REMOVAL TO FEDERAL COURT

on the interested parties in said action or proceeding by personally delivering a true copy thereof, enclosed in a sealed envelope to the attorney(s) of record for said parties at the office address of said attorney(s), as follows:

Chad Austin, Esq.
3129 India Street
San Diego, California 92103-6014
Telephone: 619-297-8888
Facsimile: 619-295-1401
*Attorney for James M. Kinder*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 26, 2007, at San Diego, California.

[signature]

Print Name: Adrian Villegas

Registration No. 1226; County of San Diego

Time of Delivery: 12.12 pm

Person Served (if different than above): Chad Austin

W02-WEST:8JCD1\400503278.1